

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

Case No. 6:18-cr-184-Orl-37TBS

BRIAN BURT

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**ORDER**

In the instant criminal action, the Court held a suppression hearing on December 13, 2018 (*see* Doc. 175), following Defendant's motion to suppress evidence and statements obtained from traffic stops on July 3, 2018 ("**July 3 Stop**") and August 3, 2018 ("**August 3 Stop**") (Doc. 166 ("**Motion**")), and the Government's opposition (Doc. 169). At the hearing, the Court orally denied the Motion as to the July 3 Stop and took the Motion as to the August 3 Stop under advisement. This Order follows.

Regarding the July 3 Stop, the Court heard testimony at the hearing from Officers Justin Deal and Richard Jung.<sup>1</sup> Specifically, Officer Jung testified that he was contacted to conduct a traffic stop of a member of The Pagans Motorcycle Club ("**The Pagans**") because other officers believed the individual had just purchased methamphetamine. While following Defendant, Officer Jung observed two traffic violations on Defendant's motorcycle: (1) the brake light was out; and (2) the handlebars were above shoulder

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<sup>1</sup> Although the Court heard testimony from Officer Justin Deal, Defendant moved to have his testimony stricken due to a potential Jencks Act violation. Because Officer Deal's testimony was not necessary for the Government to meet its burden, the Court did not consider it when ruling on the July 3 Stop portion of the Motion.

height. Either violation would independently justify a traffic stop. After Defendant was stopped, Officer Jung asked Defendant whether he had any weapons on him, particularly due to his suspected narcotic activity, and Defendant responded in the affirmative and raised his shirt. Officer Jung then removed the firearm from his waistband for safety reasons. At that point, Officer Jung gave the firearm to Officer Deal to run it to determine whether it was stolen, and Officer Deal also ran a criminal history check on Defendant. Further, Officer Jung testified that he asked Defendant if he had a concealed carry permit, which Defendant admitted he did not have. During this conversation, Officer Deal was searching for drugs in the area using his K-9. Officer Jung then arrested Defendant because he was carrying a concealed firearm without a license, and Officer Jung searched Defendant incident to his arrest. All of this testimony was consistent with the body camera video footage of the traffic stop.

Based on Officer Jung's testimony and the video footage, the Court denied the Motion from the bench as to the July 3 Stop. Specifically, the Court found that the stop was constitutional in light of Officer Jung's observations of two traffic infractions and the reasonable suspicion arising from information known to other officers involved about a prior narcotics transaction. *See United States v. Jordan*, 635 F.3d 1181, 1186 (11th Cir. 2011) ("[L]aw enforcement officers may seize a suspect for a brief, investigatory *Terry* stop where (1) the officers have a reasonable suspicion that the suspect was involved in, or is about to be involved in, criminal activity, and (2) the stop 'was reasonably related in scope to the circumstances which justified the interference in the first place.'" (quoting *Terry v. Ohio*, 392 U.S. 1, 19-20, 30 (1968))). The subjective intent of the officers in making the stop

is irrelevant. See *United States v. Harrelson*, 465 F. App'x 866, 868 (11th Cir. 2012)<sup>2</sup> (“[W]e do not focus on the officer’s subjective motives; rather, we focus on whether the circumstances, viewed objectively, justified the stop.” (citing *Whren v. United States*, 517 U.S. 806, 812–13 (1996))). Additionally, the Court found that there was nothing constitutionally impermissible about how the July 3 Stop was handled, including its duration, given Defendant’s criminal history search and the reasonable investigation for narcotics in the area based on the information from other officers. See *United States v. Purcell*, 236 F.3d 1274, 1277 (11th Cir. 2001) (noting that a longer traffic stop may be justified if there is “articulable suspicion of other illegal activity” (quoting *United States v. Holloman*, 113 F.3d 192, 196 (11th Cir. 1997))). Further, because Defendant admitted that he was carrying a gun without a concealed carry permit, there was probable cause to arrest him. See *Lee v. Ferraro*, 284 F.3d 1188, 1195 (11th Cir. 2002) (finding that probable cause exists “when ‘the facts and circumstances within the officer’s knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense’” (quoting *Rankin v. Evans*, 133 F.3d 1425, 1435 (11th Cir. 1998))). The Court also found that the inventory search and search incident to Defendant’s arrest were reasonable. See *Beck v. State of Ohio*, 379 U.S. 89, 91 (1964).

Regarding the August 3 Stop, the Court heard testimony at the hearing from

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<sup>2</sup> While unpublished opinions are not binding precedent, they may be considered as persuasive authority. See 11th Cir. R. 36-2; see also *United States v. Almedina*, 686 F.3d 1312, 1316 n.1 (11th Cir. 2012).

Officers Jeremy Nikolow and Edward Rapoano. Officer Rapoano testified that he performed an investigatory stop of Defendant and two other individuals on motorcycles wearing “Pagans” vests following a call from a nearby bar about a disturbance by members of The Pagans gang (“**Disturbance Call**”). During this stop, Officer Rapoano observed multiple traffic violations, including the height of Defendant’s motorcycle handlebars and an unreadable tag. Officer Rapoano then asked for the individuals’ driver’s licenses and if they had any weapons on them, after which Officer Rapoano returned to his vehicle to run the motorcycle tags and the licenses.<sup>3</sup> Officer Rapoano then wrote traffic citations for the noted violations. This testimony was corroborated by Officer Nikolow, who participated in the traffic stop due to potential officer safety issues.

Officer Nikolow also testified about what he observed during the August 3 Stop. Specifically, Officer Nikolow testified that at one point during the stop, as he was turning his head back toward Defendant, he noticed Defendant’s hand finishing a tossing motion and heard an object drop in the bushes. Then, immediately after, Defendant stepped in front of him to block Officer Nikolow’s view of the bushes. Officer Nikolow waited for other officers to arrive for safety reasons and then searched the bushes, uncovering a small bag containing what appeared to be narcotics and a knife. Based on his observations, Officer Nikolow felt confident that Defendant was responsible for dropping those objects in the bushes. Once a field test of the substance returned a

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<sup>3</sup> Officer Rapoano testified that Defendant did not have his driver’s license on him at the time and that he had to run Defendant’s tag multiple times because it was difficult to read.

presumptive positive for methamphetamine, Officer Nikolow felt he “absolutely” had probable cause to arrest Defendant. According to Officer Nikolow, all of this happened while Officer Rapoano was writing the traffic citations and while other officers were investigating the Disturbance Call and issuing trespass warnings in response. Officer Nikolow also testified that during the search incident to Defendant’s arrest, it was discovered that Defendant had a knife sheath on his waistband that matched the knife Officer Nikolow found in the bushes. This testimony was also all consistent with the body camera video footage of the stop.

Here, the Court finds that the initial traffic stop was constitutional based on Officer Rapoano’s testimony that he was responding to the Disturbance Call and that he observed traffic violations based on Defendant’s motorcycle. *See Jordan*, 635 F.3d at 1186. Because there was “articulable suspicion of other illegal activity” based on the Disturbance Call, the duration of the stop was justified to ascertain the involvement of the three individuals stopped. *See Purcell*, 236 F.3d at 1277 (quoting *Holloman*, 113 F.3d at 196). Then, during this reasonable investigation, additional articulable suspicion arose based on Officer Nikolow’s testimony that he believed Defendant attempted to conceal something in the bushes, justifying a further investigation into the nature of the substance found in the bushes. *See id.*

Additionally, the Court finds that probable cause existed to arrest Defendant based on Officer’s Nikolow’s testimony that he heard an object fall into the bushes, saw Defendant’s arm in a tossing motion, noticed Defendant move to obstruct his view of the bushes, and later found methamphetamine in the bushes. *See Lee*, 284 F.3d at 1195

(defining what constitutes probable cause). Finding Officer Nikolow's testimony credible, the Court concludes that it was reasonable for Officer Nikolow to believe, based on the totality of the circumstances, that Defendant dropped the narcotics in the bushes. *See id.* Further, although the knife sheath matching the recovered knife was discovered after Defendant's arrest, and is thus irrelevant to the probable cause calculus, it corroborates Officer Nikolow's testimony that Defendant was the individual responsible for throwing the items into the bushes. Additionally, because probable cause existed to arrest Defendant, the search incident to his arrest and the inventory search of his motorcycle were also reasonable. *See Beck*, 379 U.S. at 91. Therefore, Defendant's request to suppress the evidence from the August 3 Stop is also denied.

However, the Court will grant Defendant's Motion with respect to any statements Defendant made after he was placed under arrest on August 3, 2018 until the point in time when he was read the *Miranda* warnings. This includes anything uttered by Defendant between the time stamps on the video evidence presented by Defendant at 22:23:42 and 22:47:25. The Government concedes that these statements are subject to suppression. (*See* Doc. 169, pp. 9-10.) Although the body camera video footage does not reveal that Defendant made any inculpatory statements during this time, any statements made between the time of Defendant's arrest and the administering of the *Miranda* warnings are suppressed.

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. Defendant Brian Burt's Opposed Motion to Suppress Evidence (Doc. 166) is **GRANTED IN PART AND DENIED IN PART**.

- a. The Court **GRANTS** the Motion as to the statements made by Defendant between his arrest on August 3, 2018 and the administering of the *Miranda* warnings.
- b. In all other respects, the Motion is **DENIED**.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on January 7, 2019.



  
ROY B. DALTON JR.  
United States District Judge

Copies to:  
Counsel of Record